

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
VICTOR PATRICK MERCALDO, and)	CASE NO. 08-20733-jpk
MELISSA ANNE MERCALDO,)	Chapter 7
Debtors.)	

ORDER DENYING MOTION TO VACATE ORDER/JUDGMENT("MOTION")

The Motion, filed on July 10, 2008, seeks to set aside an order entered on July 9, 2008, which granted a motion for stay relief and abandonment filed by Nissan Motor Acceptance Corporation on June 17, 2008.

The court first notes that the Motion was not accompanied by a separate supporting brief, contrary to the requirements of N.D.Ind.L.B.R. B-9023-1(a). Additionally, the Motion was accompanied by a form of notice by which debtor's counsel sought to implement the "drop-dead" procedure of N.D.Ind.L.B.R. B-2002-2, a procedure which has no application to motions of the nature of this one. Additionally, the Motion itself fails to state any basis upon which it can be granted: the creditor's motion was properly noticed to all parties in interest, including the debtors and their attorney, and no timely objection to it was filed. The motion fails to state any factual circumstances which explain the lack of a timely objection.

Most importantly, granting the requested relief would be pointless. Whether or not property which is the subject of a reaffirmation agreement has been abandoned from a bankruptcy estate has nothing whatever to do with the processing of the reaffirmation agreement, the requirements for which are set out in 11 U.S.C. § 524(c). The Motion states that it was the debtor's intent to enter into a reaffirmation agreement, but there is no evidence that this intent has been effected in accordance with the requirements of the foregoing statute, particularly in light of the fact that the debtor's discharge was entered on June 30, 2008, thus making any agreement which was not entered into prior to that date totally nugatory.

The Court finds that the Motion should be denied.

IT IS ORDERED that the Motion is DENIED.

Dated at Hammond, Indiana on August 21, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee